

LAW AND POVERTY
FALL 2011
TUESDAY AND THURSDAY 4:30 – 5:50 PM
SYLLABUS

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Office Hours: Tuesday 3:30-4:30 pm and by appointment

Overview:

This class is an introduction to some of the issues and topics in law and poverty. From the syllabus you will see that this class is not a survey of the existing poverty programs or of the ways different groups experience poverty. Though there is equal merit in a class presenting all that is, or is not, being done on behalf of the poor, this class will be more theoretical, although current practices do form the backdrop for the work of the course. The class also mixes traditional legal readings with social science articles on poverty, as such the readings may have a different style from your readings in other classes. The law school offers a number of other courses that relate to this course and I encourage you to explore them all.

Expectations:

The expectation is that you will come to class on time, prepared to discuss the readings and prepared to participate actively and respectfully in discussions. You are also expected to check blackboard for course related announcements. You can expect that I will do my best to answer any questions you have during class or in the subsequent class. If any questions do arise but you thought of them outside of class, email me.

In order to ensure an engaged classroom dynamic, you must come to class prepared throughout the semester. I reserve the right to bump up final grades that are bordering between two grades for classroom participation and involvement, for example a borderline B+/A- can become an A- for classroom participation and involvement.

A word about classroom respect: this class attracts people of all political backgrounds and beliefs and central to the success of the class is an atmosphere of intellectual and personal honesty. As a professor, I rely upon students to express different perspectives on the issues; what this means is that if you feel the tone of the class is skewing too far in one direction – along conservative or liberal lines or with regard to a particular issue – it is up to you to interject your own perspective. Each year there are people that see the class as too conservative and others who see it as too liberal; yet, the class will be made up of a range of views and I will rely upon you to make sure these views are expressed. Though class discussions may expose you to ideas you find wrong or even distasteful, lack of respect for peers hampers the learning environment. If during the course you become concerned about any issue involving the class, do not hesitate to speak with me.

Assignments and Grading:

The readings are found on Blackboard and online. I have decided to organize the readings in a manner more similar to a graduate course rather than normal law school classes. I have done this because of my assumption that Poverty Law is something you are passionate about and that you may therefore choose to read more than is strictly necessary. There are three assessment options: (1) a service project, (2) a research paper, or (3) a standard final exam.

(1) Service

Should you choose to do a service project in law and poverty, the project must be approved in advance, at the latest by the end of the third week of classes. The requirement is that the project not be something that you are committed to outside of this class or with an organization you have a prior history of involvement (it can be within a field you have knowledge of but cannot be simply a repeat of prior experiences). The work you do must be uncompensated; however, the choice of project and group you work with (though you could design your own independent work as well) is entirely up to you. The total time commitment is 60 hours. At the conclusion of the project, a 15 page paper (double spaced, size 12 Times font) which describes your work, experiences, and understanding of your organization and your role (1/2 the paper) and places your service in the context of existing literature (1/2 the paper) is due to my email account before the start of the final exam.

(2) Research

Should you choose to do a research paper, I must approve the paper topic and we must individually discuss your paper during office hours or by appointment within the first three weeks of the start of the semester. The choice of topic is yours and can span a wide range of topics but must relate to some area of law and poverty. Do discuss with me any topic you are interested or passionate about within the first four weeks of the start of class and email an outline or overview to my email account within eight weeks of the start of class.

Papers must be well written, well edited, with all authorities properly cited using footnotes, not endnotes. They should be roughly 30 pages long, double spaced, Times 12 font, but quality matters more than quantity. As with your work in all classes, all work must conform to the honor code and be your own work, not someone else's work passed off as your own. For these papers, I will more highly value work that is new or original to work that simply repeats the existing debate in the literature. Finally, work for this class can be used to count towards your Upper Level Writing Requirement, but this must be discussed with me early in the semester and comes with slightly higher expectations. Note, the Registrar's Office length standards for the ULWR are lower than my standards but I am allowed to set higher standards and you will be held to them. Research papers are due to my email account before the start of the final exam.

(3) Final Exam

The final exam in this class will be a closed book exam made up of two essays. Ability to demonstrate a comfort with the course materials and ideas will be rewarded in grading the exams. Given the ability to alternatively write a research paper or do a service project, *there will be no flexibility* with regard to (1) the exam date and time as set by the Registrar's Office, (2) the closed book nature of the exam, and (3) the use of exam software. Use of the school's secure exam software is required and you are bound by the honor code to respect the closed book nature of the final.

Suggested Optional Readings

JOHN ICELAND, POVERTY IN AMERICA (2006)

JASON DEPARLE, AMERICAN DREAM: THREE WOMEN, TEN KIDS, AND A NATION'S DRIVE TO END WELFARE (2004)

Tentative Readings by Class Date

NOTE: I reserve the right to change readings as the class progresses depending on coverage and class discussion.

Aug. 23: Introduction to U.S. Poverty

Poverty Quiz http://old.usccb.org/cchd/povertyusa/PovertyUSA_Quiz2010.pdf

U.S. Conference of Catholic Bishops, Campaign for Human Development, "Poverty Tour" (2007), <http://www.usccb.org/cchd/povertyusa/tour.htm>

John Cassidy, "Relatively Deprived," New Yorker (April 3, 2006)

Institute for Research on Poverty, "What are Poverty Thresholds and Poverty Guidelines?" <http://www.irp.wisc.edu/faqs/faq1.htm>

Carmen DeNavas-Walt, Bernadette D. Proctor, & Jessica C. Smith, Income, Poverty, and Health Insurance Coverage in the United States: 2009 (Sep. 2010), <http://www.census.gov/prod/2010pubs/p60-238.pdf>

NATIONAL LOW INCOME HOUSING COUNCIL, OUT OF REACH: RENTERS AWAIT THE RECOVERY (2011), <http://www.nlihc.org/oor/oor2011/oor2011pub.pdf>

Robert Rector & Rachel Sheffield, "Air Conditioning, Cable TV, and an Xbox: What is Poverty in the United States Today?," Heritage Foundation Backgrounder No. 2575, July 18, 2011, http://thf_media.s3.amazonaws.com/2011/pdf/bg2575.pdf

Melissa Boteach & Donna Cooper, "What You Need When You Are Poor," Center for American Progress, Aug. 5, 2011, http://www.americanprogress.org/issues/2011/08/heritage_poor.html

Aug. 25: Measuring Poverty

U.S. Department of Health & Human Services, Office of the Secretary, *Annual Update of the HHS Poverty Guidelines*, Federal Register, (January 2011), <http://aspe.hhs.gov/poverty/11fedreg.pdf>

Gordon M. Fisher, *The Development and History of the Poverty Thresholds*, Social Security Bulletin, Vol. 55, No. 4 (1992), <http://www.ssa.gov/history/fisheronpoverty.html>

Aug. 30: Causes of Poverty

AMARTYA SEN, *INEQUALITY REEXAMINED* (1992), §7.2 – §7.5 “The Nature of Poverty... Poverty in Rich Countries,” p107-116.

WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (Vintage Books 1996) Ch. 6, “The American Belief System Concerning Poverty and Welfare,” p149-182.

Sep. 1: Role of Lawyers

Securing Equal Justice For All: A Brief History of Civil Legal Assistance in the United States, by Alan W. Houseman & Linda E. Perle (CLASP Nov. 2003),
http://www.clasp.org/publications/Legal_Aid_History.pdf

Austin Sarat, “. . . *The Law Is All Over*”: *Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 *Yale J.L. & Human.* 343 (1990)

Optional

Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants’ Voices in Legal Process*, 20 *Hofstra L. Rev.* 533 (1992).

Allen Redlich, *Who Will Litigate Constitutional Issues for the Poor?*, 19 *HASTINGS CONST. L.Q.* 745 (1992).

Sep. 6: Welfare

Amy Wax, “Rethinking Welfare Rights: Reciprocity Norms, Reactive Attitudes, and the Political Economy of Welfare Reform,” 63 *Law & Contemp. Prob.* 257, 269-282.

CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980* (Basic Books 1984) Ch. 12, “Incentives to Fail I: Maximizing Short-Term Gains,” p154-162.

Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 *YALE L.J.* 719 (2002).

STEFANCIC & DELGADO, *NO MERCY* (1996) p82-95.

Sep. 8: Welfare Reform

THEODORE R. MARMOR, JERRY L. MASHAW, & PHILIP L. HARVEY, *AMERICA’S MISUNDERSTOOD WELFARE STATE* (1990), p104-114.

SKIM: House Ways and Means Committee, *2000 Green Book*,
<http://aspe.hhs.gov/2000gb/sec7.txt>, §7 TANF, p352-354, 7-3 & 7-4.

Douglas J. Besharov, *Two Cheers for Welfare Reform*, American Enterprise Institute, On the Issues Series (2006),
<http://www.welfareacademy.org/pubs/welfare/twocheersforwelfarereform.pdf>.

Robert Rector, *Welfare to Work Is a Success, but Not a Panacea for Poverty's Root Causes*, Heritage Foundation Commentary (Aug. 31, 2006),
<http://www.heritage.org/press/commentary/ed083106d.cfm>.

Pamela Loprest & Sheila Zedlewski, *The Changing Role of Welfare in the Lives of Low-Income Families with Children*, The Urban Institute, Occasional Paper Number 73 (Aug. 2006),
http://www.urban.org/UploadedPDF/311357_occa73.pdf.

Jason DeParle, "The Silence of the Liberals," THE WASHINGTON MONTHLY (Apr. 1999).

Sep. 13: Welfare Rights

Continue readings from last class

Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964).

Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499, 1502-1510 (1991).

Sep. 15: Welfare Litigation

Goldberg v. Kelly, 397 U.S. 254 (1970)

Dandridge v. Williams, 397 U.S. 471 (1970)

Jefferson v. Hackney, 406 U.S. 535 (1972).

Sep. 20: Conditionality

HUD v. Rucker, 535 U.S. 125 (2002)

William H. Simon, *The Invention and Reinvention of Welfare Rights*, 44 MD. L. REV. 1 (1985).

Adam Liptak, "Full Constitutional Protection for Some, But No Privacy for the Poor," NEW YORK TIMES (July 16, 2007).

Sep. 22: Societal Privilege

CLAUDE S. FISCHER ET AL, *INEQUALITY BY DESIGN: CRACKING THE BELL CURVE MYTH* (1996) Ch. 5, "The Rewards of the Game," and Ch. 6, "How Unequal?," p102-157.

Mark L. Ascher, *Curtailing Inherited Wealth*, 89 MICH. L. REV. 69 (1990), p69-121, p148-151.

BRUCE ACKERMAN & ANNE ALSTOTT, *THE STAKEHOLDER SOCIETY* (1999) Ch. 9, "Taxing Privilege," p155-177.

VERY Optional

For Fun: Ezra Rosser, On Becoming "Professor": A Semi-Serious Look in the Mirror, 36 *FL. ST. U. L. REV.* 215 (2009)

Not Fun: Ezra Rosser, Obligations of Privilege, 32 *N.Y.U. REV. L. & SOC. CHANGE* 1 (2007)

ClassCrits Conference Sep. 23-24

Limited Participation Required (Class on Oct. 4 cancelled)

Sep. 27: New Gilded Age

DAVID WAGNER, *WHAT'S LOVE GOT TO DO WITH IT?: A CRITICAL LOOK AT AMERICAN CHARITY* (2001), Ch. 1, "Introduction: Charity as an American "Glorifying Myth" p1-14, and "Moving beyond Clichés," p172-180.

David Nasaw, "We Can't Rely on the Kindness of Billionaires," *Washington Post* (Sep. 23, 2007).

Daniel Gross, "Income Inequality, Writ Larger," *NEW YORK TIMES* (June 10, 2007).

Stephanie Strom, "Big Gifts, Tax Breaks and a Debate on Charity," *NEW YORK TIMES* (Sep. 6, 2007).

Sep. 29: Delivery Choices

Muhammad Yunus, *Banker to the Poor* (2003), Ch. 10, "Applications in the United States and Other Wealthy Countries," p174-192.

Michael Walzer, *Spheres of Justice* (1983), Ch. 4, "Money and Commodities," p95-108.

Robert Greenstein, "Universal and Targeted Approaches to Relieving Poverty: An Alternative View," in *The Urban Underclass* 437-38, 446-59 (Christopher Jencks & Paul E. Peterson, eds., 1991)

Oct. 4 (No Class)

Oct. 6: Supplementing Income

R. Kent Weaver, *Ending Welfare as We Know It* (2000), EITC p78-84.

Steven Kelman, "A Case for In-Kind Transfers," *Economics and Philosophy* 2, 1986, p55-73.

Jason DeParle, "Living on Nothing But Food Stamps," New York Times, Jan. 3, 2010.

Oct. 11: Housing

Jason DeParle, "Slamming the Door," New York Times, Sunday Magazine (Oct. 20, 1996) [Journal of Housing version].

Jennifer Egan, "To Be Young and Homeless," New York Times Sunday Magazine, 3/24/2002,
<http://query.nytimes.com/gst/fullpage.html?res=9E0CE6DB1438F937A15750C0A9649C8B63>.

J. Skelly Wright, "The Courts Have Failed the Poor," New York Times (Mar. 9, 1969).

Letter from J. Skelly Wright to Edward Rabin (Oct. 14, 1982).

United States General Accounting Office, *Federal Housing Assistance: Comparing the Characteristics and Costs of Housing Programs*, GAO-02-76 (2002),
<http://www.gao.gov/new.items/d0276.pdf>.

Optional

Tyler Currie, "A Long Way Home: Danette Tucker's Desperate Search for an Affordable Place to Live," WASHINGTON POST (Dec. 17, 2006).

Section 8 Fact Sheet, HUD, http://nhl.gov/offices/hsg/mfh/gendocs/facts_sec8.pdf.

Harry Simon, *Towns without Pity*, 66 TULANE L. REV. 631 (1992).

Malcom Gladwell, "Million Dollar Murray," The New Yorker (Feb. 13, 2006).

Oct. 13: Housing and Crisis

Continue readings from last class

JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING 2011 (2011),
<http://www.jchs.harvard.edu/publications/markets/son2011/son2011.pdf>.

Oct. 18: Education

WILLIAM G. BOWEN, MARTIN A. KURZWEIL & EUGENE M. TOBIN, EQUITY AND EXCELLENCE IN AMERICAN HIGHER EDUCATION 73-94 (2005), Ch. 4, "Equity on a National Level: Socioeconomic Status and Race."

Dan Barry, "Legacy of School Segregation Endures, Separate but Legal," NEW YORK TIMES (Sep. 30, 2007).

San Antonio v. Rodriguez, 411 U.S. 1 (1973).

Optional

Meredith v. Jefferson County Board of Education, oral argument,
http://www.oyez.org/cases/2000-2009/2006/2006_05_915/.

Paul Tough, “The Harlem Project,” *New York Times Sunday Magazine*, June 20, 2004.

Oct. 20: Capitalism

Jeffrey D. Sachs, *Twentieth Century Political Economy: A Brief History of Global Capitalism*, Oxford Review of Economic Policy, Vol. 15, No. 4 (1999)

HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 160-218 (2000), Ch. 6 “The Mystery of Legal Failure.”

Bill Gates, “Making Capitalism More Creative,” *TIME MAGAZINE* (July 31, 2008),
<http://www.time.com/time/business/article/0,8599,1828069,00.html>.

Optional

Andrew Rice, “The Suburban Solution,” *New York Times, Sunday Magazine* (Mar. 5, 2005).

Oct. 25: Working Poor

Barbara Ehrenreich, “Nickel and Dime: on (Not) Getting by in America” (Jan. 1999).
<http://www.wesjones.com/ehrenreich.htm>.

Steven Malanga, “The Myth of the Working Poor,” *City Journal* (Autumn 2004),
http://www.city-journal.org/html/14_4_working_poor.html

Liza Featherstone, “Down and Out in Discount America,” *THE NATION* (Jan. 3, 2005).

Oct. 27: Work

DAVID K. SHIPLER, *THE WORKING POOR: INVISIBLE IN AMERICA* 3-120 (2004), Intro – Ch. 4.

Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty, and America’s Eroding Industrial Base*, 81 *GEO. L.J.* 1757 (1993).

Optional

Economic Policy Institute, *EPI Issue Guide: Minimum Wage*, Aug. 2008,
http://www.epi.org/issueguides/minwage/epi_minimum_wage_issue_guide.pdf.

Nov. 1: Immigration

Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137 (2002).

Optional

SONIA NAZARIO, ENRIQUE'S JOURNEY (2007).

Nov. 3: Katrina

Charles Murray, "The Hallmark of the Underclass: The poverty Katrina underscored is primarily moral, not material," Wall Street Journal, Oct. 2, 2005,
<http://www.opinionjournal.com/extra/?id=110007348>.

Nov. 8: Economic Mobility

Thomas H. Sander, "A Friend In Need," Boston Globe (Nov. 14, 2005).
Background available at: <http://www.bowlingalone.com/>

Jared Bernstein, "Economic Mobility in the United States: How Much Is There and Why Does It Matter?" Ch. 2, p23-37 in ENDING POVERTY IN AMERICA: HOW TO RESTORE THE AMERICAN DREAM (John Edwards, Marion Crain & Arne Kalleberg eds, 2007).

Charles Reich, "The Revolt of the Anxious Class," Speech before Democratic Leadership Council, Nov. 22, 1994,
<http://www.dol.gov/oasam/programs/history/reich/speeches/sp941122.htm>.

Julia B. Isaacs, Isabel V. Sawmill & Ron Haskins, *Getting Ahead or Losing Ground: Economic Mobility in America*, Economic Mobility Project (2008),
www.economicmobility.org/assets/pdfs/Economic_Mobility_in_America_Full.pdf.

Bhashkar Mazumder, *Upward Intergenerational Economic Mobility in the United States*, Economic Mobility Project (2008),
http://www.economicmobility.org/assets/pdfs/EMP_Upward_Mobility.pdf.

Optional

David Leonhardt, "The New Inequality," NEW YORK TIMES (Dec. 10, 2006).

"The rich, the poor and the growing gap between them," THE ECONOMIST (June 15, 2006).

Nov. 10: Race

Henry Louis Gates, Jr., *Forty Acres and a Gap in Wealth*, The New York Times (Op-Ed, November 18, 2007).

C. Michael Henry, "Introduction: Historical Overview of Race and Poverty from Reconstruction to 1969," p1-50 in RACE, POVERTY, AND DOMESTIC POLICY (C. Michael Henry ed., 2004).

ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL (1992), Ch. 4, “White Responses: Right and Left, Guilt and Sex,” p50-64.

Nov. 15: Consciousness

Barbara J. Flagg, “*Was Blind, But Now I See*”: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 Mich. L. Rev. 953 (1993), p953-959, p970-979, and p1017.

Note, “*Trading Action for Access*”: *The Myth of Meritocracy and the Failure to Remedy Structural Discrimination*, 121 HARV. L. REV. 2156 (2008),
www.harvardlawreview.org/issues/121/june08/notes/myth_of_meritocracy.pdf.

Richard Delgado, *Ten Arguments Against Affirmative Action—How Valid?*, 50 ALA. L. REV. 135 (1998).

Nov. 17: Gender

Peggy McIntosh, “White Privilege: Unpacking the Invisible Knapsack,” p1-7.

Louise Story, “Many Women at Elite Colleges Set Career Path to Motherhood,” New York Times (Sep. 20, 2005).

E. J. Graff, “The Opt Out Myth,” Columbia Journalism Review (Mar./Apr. 2007).

Optional

Katha Pollitt, “Desperate Housewives of the Ivy League,” The Nation (Oct. 15, 2007).

Nov. 22: Structure

JACK KNIGHT, INSTITUTIONS AND SOCIAL CONFLICT 1-47 (1992), Ch. 1 – Ch. 2.

ROBERTO MANGABEIRA UNGER, DEMOCRACY REALIZED: THE PROGRESSIVE ALTERNATIVE 16-41, 163-187 (1998), <http://www.law.harvard.edu/faculty/unger/english/demore.php>.

Francis Fox Piven, *Foreword* to WELFARE: A DOCUMENTARY HISTORY OF U.S. POLICY AND POLITICS (Gwendolyn Minks & Rickie Solinger eds. 2003),
<http://www.nyupress.org/webchapters/0814756530forwd.pdf>.

Nov. 24 (Thanksgiving, No Class)

Nov. 29: Looking Forward

Center for American Progress, *From Poverty to Prosperity: A National Strategy to Cut Poverty in Half* (Mark Greenberg, Indivar Dutta-Gupta & Elisa Minoff eds, 2007),
http://www.americanprogress.org/issues/2007/04/poverty_report.html.